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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 STAR FABRICS, INC.,

12 Plaintiff,

13 v.

14 PROTREND LTD.; THE TJX  
15 COMPANIES, INC.; and DOES 1-10,  
inclusive,

16 Defendants.  
17

CASE NO. CV09-7815 VBF (CW<sub>x</sub>)

Hon. Valerie Baker Fairbank  
Courtroom 9

**ORDER RE STIPULATED  
PROTECTIVE ORDER FOR  
CONFIDENTIAL TREATMENT OF  
DOCUMENTS OR INFORMATION**

**NOTE CHANGES MADE BY  
COURT**

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21 Pursuant to stipulation of the parties, AND GOOD CAUSE APPEARING  
22 THEREFORE, THE COURT HEREBY ORDERS THAT:  
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24 **STATEMENT OF GOOD CAUSE:** This action involves claims for  
25 copyright infringement under the Copyright Act of 1976, Title 17 U.S.C., § 101 et  
26 seq. The parties, who are variously manufacturers and vendors of textile designs  
27 and apparel retailers, are direct and/or indirect competitors of each other. A primary  
28 element of this case is related to Plaintiff's claim that because of Defendants'

1 alleged wrongful acts, Plaintiff has lost substantial business relating to its  
 2 copyrighted designs. The parties therefore recognize that extensive discovery  
 3 requesting information from the parties, their vendors, customers and clients,  
 4 including financial information, market information and other commercially and  
 5 competitively sensitive information may be necessary to prove and/or disprove  
 6 Plaintiff's claims and Defendants' defenses thereto. There will also be multiple  
 7 depositions of the parties' employees or agents and third party vendors, customers  
 8 or clients and such persons will likely be asked to answer questions on these  
 9 potentially sensitive subject areas. The parties, as competitors in the industry, will  
 10 likely be placed at a competitive or economic disadvantage if such confidential  
 11 and/or proprietary information is disclosed to other parties and/or the public at large.  
 12 This protective order ("Protective Order" or "Order") is therefore necessary to avoid  
 13 any prejudice or harm in the form of loss of competitive advantage which would  
 14 likely result if such information was disclosed in the absence of the protections set  
 15 forth herein. This Order is also necessary for the orderly management of this  
 16 litigation. Without this Order, the exchange of party information, as well as  
 17 information needed from third parties, including most importantly the parties'  
 18 vendors, customers or clients may become logistically very difficult, time  
 19 consuming and expensive.

20 **A. Definition of "Confidential Information"**

21 1. "Confidential Information," as used herein, means all  
 22 information in whatever form, such as oral, written, documentary, tangible,  
 23 intangible, electronic, or digitized now or hereafter in existence that:

24 (a) is protected under the Uniform Trade Secrets Act, California  
 25 Civil Code section 3426, et. seq., in that such information derives independent  
 26 economic value, actual or potential, from not being generally known to, and not  
 27 being readily ascertainable by proper means, by other persons who can obtain  
 28 economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and

(c) is otherwise regarded by a party as being confidential, private, or proprietary in nature; and

(d) as illustrative examples only, the parties anticipate that the following descriptive categories will be designated as Confidential Information under this Order, including, but not limited to, customer lists, confidential financial information of the parties, including profit margins, sales data, profits, and retail sales summaries, vendor lists, order summaries, confidential contracts, and proprietary fabric/style specifications.

2. Confidential Information is unlimited in kind or form and includes, by way of example only and without limitation thereto, information relating to the following: any products, designs, specifications, tests, plans, studies, surveys, manufacture, distribution, marketing, promotion, advertisement, sales, opportunities, vendors, customers, financial matters, costs, sources, prices, profits, research, development, analysis, know-how, show-how, personnel, strategies, or competition.

## **B. Production of Confidential Information**

1. All efforts by any party or witness in this matter to designate any information as “Confidential,” shall be governed by the terms of this Order. The party by whom any disclosure is made is the “Disclosing Party” and the party to whom any disclosure is made is the “Receiving Party.” By receiving any property designated as “Confidential,” the Receiving Party agrees not to disclose, publish, disseminate, or use, other than as expressly permitted herein, any such property and will assure that all reasonable efforts are made to prevent any unauthorized use, disclosure, publication or dissemination of such property.

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2           2. All Confidential Information produced by the Disclosing Party to  
3 the Receiving Party in whatever form (e.g., documents, materials, things, testimony  
4 or other information) during the course of this matter shall be designated  
5 “Confidential” or “Confidential-Attorneys’ Eyes Only” in accordance with the terms  
6 of this Order, infra, prior to disclosure, by use of a reasonably conspicuous and  
7 prominent mark. In the case of documents, the mark shall be on every page.

### 8           **C. Levels of Confidentiality**

9           Any information designated as “Confidential” or “Attorneys’ Eyes  
10 Only” shall be restricted in accordance with the following levels of confidentiality:

11           1. “Attorneys’ Eyes Only” -- Information designated as “Attorneys’  
12 Eyes Only” shall be restricted to viewing, or copying by, and disclosure to:

13                   (a) Attorneys acting on behalf of the parties in this matter;

14                   (b) The office personnel employed by the counsel working  
15 under the direct supervision of said counsel;

16                   (c) The United States District Court for the Central District of  
17 California and all clerks and other personnel in the United States District Court for  
18 the Central District of California, before which this action is pending; and

19                   (d) Experts and consultants necessarily retained by counsel of  
20 record in this litigation, but only if these experts and consultants comply with this  
21 agreement in full and read, sign, and agree to be bound by all of its terms.

22           2. “Confidential” -- Information designated as “Confidential” shall  
23 be restricted to viewing, copying by, and disclosure to:

24                   (a) All “Attorneys’ Eyes Only” persons; and

25                   (b) All employees, officers, and directors of each party of  
26 record. It is not necessary that each such person sign this order, provided that the  
27 Receiving Party has previously notified all employees, officers, and directors of the  
28 existence of this order, its terms, and the consequences of an unauthorized

1 disclosure.

2 **D. Depositions**

3 1. Any party may designate testimony on oral deposition as  
4 “Confidential” or “Attorneys’ Eyes Only”. The designation of such testimony shall  
5 be made at any point during the deposition by so stating on the record and  
6 identifying the level of protection desired.

7 2. Once testimony has been designated as “Confidential” or  
8 “Attorneys’ Eyes Only”, only the following persons shall be present for the answer:

- 9 i. Persons authorized under this Order;  
10 ii. The deponent; and  
11 iii. The reporter and videographer.

12 3. Each court reporter and videographer participating in any  
13 deposition shall be provided with a copy of this Order and shall adhere to its  
14 provisions. Each court reporter must separately bind those portions of deposition  
15 transcript and related exhibits deemed confidential and shall further separate into  
16 separate bound deposition transcripts—by the various levels of confidentiality—and  
17 shall thereon place a reasonably conspicuous and prominent designation on the first  
18 page of each such bound transcript or exhibits.

19 4. A deponent and/or party shall have until thirty (30) days after  
20 receipt of a deposition transcript to designate additional portions of the transcript  
21 under this Order.

22 5. Each party shall cause each copy of the transcript in its custody  
23 or control or that comes into its custody or control to be immediately marked as  
24 designated.

25 6. Prior to the expiration of the thirty (30) days, a deposition  
26 transcript and/or the substance of a deponent’s answers may be disclosed only to  
27 those persons authorized to receive items designated as “Attorneys’ Eyes Only” and  
28 the deponent.

**E. Items Filed with the Court**

1. When any documents, things, or testimony in whatever form is filed or lodged with Court that is designated as “Confidential” or “Attorneys’ Eyes Only”, they shall be ~~maintained~~ **submitted for filing** under seal with the United States District Court for the Central District of California, pursuant to this Order, after the parties comply with the procedures set forth in Local Rule 79-5 for the filing of records under seal, or as otherwise ordered by the Court. In so doing, they will be ~~filed~~ **submitted for filing** in a sealed envelope. The envelope will contain an indication of the general nature of the contents of the envelope, and shall have endorsed thereon the title and docket number of this action and a boldface label conspicuously placed on the front of the said envelope stating:

THIS ENVELOPE CONTAINS DOCUMENTS, THINGS, OR TESTIMONY WHICH ARE ‘CONFIDENTIAL’ (OR ‘CONFIDENTIAL-ATTORNEYS’ EYES ONLY’) AND SUBJECT TO THE TERMS OF A PROTECTIVE ORDER OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA. IT IS NOT TO BE OPENED OR THE CONTENTS DISPLAYED OR REVEALED EXCEPT TO THIS COURT AND ITS STAFF.

2. To the extent practicable, designated items or the substance of designated items shall be filed separately or in severable portions of filed papers, so that non-designated items may be freely disseminated.

**F. Inadvertent Disclosure**

1. The inadvertent or unintentional disclosure of “Confidential” or “Attorneys’ Eyes Only” or any other privileged or protected item, regardless of whether the item was so designated at the time of disclosure, shall not be deemed a

1 waiver in whole or in part of a party's claim of protection or privilege either as to  
 2 the specific information disclosed therein or on the same or related subject matter,  
 3 provided that the party later asserting a claim of protection or privilege informs the  
 4 opposing parties of its claim within a reasonable time after learning of the  
 5 disclosure.

6           2.     The Receiving Party shall promptly destroy, sequester, or return  
 7 to the Disclosing Party any protected or privileged item discovered by the  
 8 Disclosing Party to have been inadvertently or unintentionally disclosed to the  
 9 Receiving Party upon being notified of the Disclosing Party's claim of protection or  
 10 privilege. If the Receiving Party disclosed the protected or privileged item before  
 11 being notified of the Disclosing Party's claim of protection or privilege, it must take  
 12 reasonable steps to retrieve the item for destruction, sequestering, or return to the  
 13 Disclosing Party.

#### 14           **G.     Acknowledgment of Order**

15           Each person required by this Order to sign a statement agreeing to be  
 16 bound by the Order must sign a statement to be delivered to and maintained by the  
 17 Disclosing Party which states the following:

18           I have read the PROTECTIVE ORDER issued by the United States  
 19 District Court for the Central District of California in the matter of *Star Fabrics, Inc.*  
 20 *v. Protrend LTD; TJX Companies, Inc.*, Case No. CV09-7815 VBF (CWx),  
 21 regarding confidentiality of materials designated by the parties and their counsel. I  
 22 understand and agree to be bound by the terms of this Order.

#### 23           **H.     Agreement of Parties to Order**

24           All parties to this action, their counsel, and all other persons subject to  
 25 this Order shall be bound by this Order and shall abide by all of the terms of this  
 26 Order until otherwise ordered by the United States District Court for the Central  
 27 District of California, or by written notice releasing them from the respective  
 28 obligations received from the pertinent Disclosing Party.

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In the event that information designated as Confidential Information is contemplated to be used at trial, the Receiving Party seeking to use such information shall give notice to the Court and the Designating Party of its intention to use the Confidential Information at trial sufficiently in advance of its contemplated use so that the Court can have the matter heard. **The terms of this Protective Order do not govern the use of confidential information at trial.** ~~The Designating Party continues to bear the burden of showing to the Court that there is good cause to keep the materials sought to be used at trial as subject to and treated under the terms of this Protective Order so that the Court may keep the Confidential Information exempt from public disclosure even though the Confidential Information is used at trial.~~

#### **I. Continuing Effect of Order**

At the conclusion of this matter by lapse of all appeal right after entry of final judgment from which no further rights of appeal exist, or by settlement of this matter, each party shall promptly return to the other party all materials designated as confidential and shall thereafter continue to respect all obligations hereunder as to such designated materials. The Receiving Party shall not retain any copies of such materials for any purpose including archival without the express written consent of the Disclosing Party, except:

1. for archival purposes, the Receiving Party will be entitled to maintain a record by list or directory for the documents that were received and returned; and

2. outside counsel of record may retain bona fide work product pursuant to all obligations hereunder as to such designated materials.

#### **J. Additional Relief**

No party is prevented from seeking relief not provided by this Order, or otherwise seeking relief from the United States District Court for the Central District

1 of California, as may be appropriate to protect its interests or otherwise prepare this  
2 matter for trial.

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4 To the extent that there are any disputes relating to the Protective  
5 Order, such as the designation of confidential documents, Local Rule 37 governs the  
6 procedure for resolving such disputes. In making or opposing any motion relating to  
7 the designation of Confidential Information, the party seeking to maintain a  
8 document under the Protective Order shall bear the burden of showing specific  
9 prejudice or harm if the information sought to be protected is disclosed to the public.  
10 See e.g., *Phillips ex rel. Byrd v. General Motors Corp.*, 307 F.3d 1206, 1210-1211  
11 (9th Cir. 2002).

12 **K. Use for This Litigation Only**

13 1. Items designated under this Order shall not be used by any  
14 recipient or disclosed to anyone for any purpose other than in connection with the  
15 above-captioned action.

16 2. In the event that any party and/or recipient of Confidential  
17 Information pursuant to this Order is served with legal process or otherwise  
18 requested to disclose any Confidential Information (the “Disclosing Entity”) by any  
19 person or entity not covered by this Order, including, without limitation, other  
20 insurance carriers, state, local or federal agencies, or litigants in other litigation (the  
21 “Requesting Entity”), the Disclosing Entity shall give notice thereof, by telephone  
22 and facsimile, as soon as practicable but in any event sufficiently prior to the  
23 requested disclosure to afford an opportunity to intervene for any party who may be  
24 adversely affected by the disclosure except to the extent that such notice is  
25 precluded by law.

26 **L. Prior Orders**

27 This Stipulated Protective Order shall not affect any prior order of the  
28 Court.

1           **M. Execution and Counterpart**

2           This Stipulated Protective Order may be executed in one or more  
3 counterparts, each of which shall be deemed to be an original, but all of which  
4 together shall constitute one and the same instrument. Facsimile signatures or any  
5 party upon the signature page of this Stipulated Protective Order shall be binding  
6 upon the parties hereto and may be submitted as though such signatures were  
7 original signatures.

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9           **IT IS SO ORDERED.**

10  
11 DATED: May 13, 2010

By:



The Honorable Carla M. Woehrle  
United States Magistrate Judge